

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LOUIS DEAN KATRANIS,

Defendant-Appellant.

UNPUBLISHED
December 7, 2010

No. 293135
Oakland Circuit Court
LC No. 2008-222398-FH

Before: O'CONNELL, P.J., and SERVITTO and SHAPIRO, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction for possession of less than 25 grams of heroin, MCL 333.7403(2)(a)(v). Defendant was sentenced, as a fourth habitual offender, MCL 769.12, to 180 days in jail, and one-year suspension of his driver's license. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that there was insufficient evidence to sustain his conviction. We disagree.

When reviewing a challenge to the sufficiency of evidence, this Court reviews de novo and in a light most favorable to the prosecution. *People v Cline*, 276 Mich App 634, 642; 741 NW2d 563 (2007). "[A] court must . . . determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt." *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992). Nevertheless, "[t]his Court will not interfere with the trier of fact's role of determining the weight of the evidence or the credibility of witnesses. Circumstantial evidence and reasonable inferences that arise from such evidence can constitute satisfactory proof of the elements of the crime." *People v Passage*, 277 Mich App 175, 177; 743 NW2d 746 (2007) (internal citation omitted).

Defendant was convicted of possession of less than 25 grams of heroin, MCL 333.7403(2)(a)(v). The elements of possession of less than 25 grams of heroin are: (1) defendant possessed a controlled substance; (2) the substance was heroin; (3) defendant knew that he was possessing heroin; and (4) the substance was in a mixture that weighed less than 25 grams. CJI2d 12.5.

Defendant argues that the prosecution failed to prove beyond a reasonable doubt that he was in possession of heroin. He argues that the heroin found beneath the seat could have belonged to Aaron Dewey, the driver. Further, defendant argues that there is no evidence the heroin was not already beneath the seat when he entered the vehicle. Consequently, defendant's conviction was based on insufficient evidence, a violation of his due process rights. We disagree.

"A person need not have actual physical possession of a controlled substance to be guilty of possessing it. Possession may be either actual or constructive." *Wolfe*, 440 Mich at 519-520, citing *People v Harper*, 365 Mich 494, 506-507; 113 NW2d 808 (1962). "Constructive possession exists when the totality of the circumstances indicates a sufficient nexus between the defendant and the controlled substance." *People v Meshell*, 265 Mich App 616, 622; 696 NW2d 754 (2005), citing *Wolfe*, 440 Mich at 521. The "essential element" is that a defendant has "dominion or right of control over the drug with knowledge of its presence and character." *People v McKinney*, 258 Mich App 157, 166; 670 NW2d 254 (2003) (quotation marks and citations omitted). "Because it is difficult to prove an actor's state of mind, only minimal circumstantial evidence is required . . . and the reasonable inferences that arise from the evidence can constitute satisfactory proof of possession." *People v Brown*, 279 Mich App 116, 136-137; 755 NW2d 664 (2008). Because the parties stipulated that the substance was heroin, only possession is at issue in this case.

Defendant was in constructive possession of the heroin. Defendant's presence in the car is not enough to show constructive possession. However, his presence, coupled with other circumstantial evidence, is enough. *People v Echavarria* 233 Mich App 356, 370; 592 NW2d 737 (1999). In this case, defendant, the only passenger in the backseat, was sitting on the seat that concealed the heroin. In addition, Dewey testified that when Deputy Mark Stanaj made the traffic stop, defendant told Dewey not to be nervous, implying that defendant was aware of the existence of the illegal substance in the car. When he was left alone in the vehicle, defendant was moving around suspiciously in the backset, although he had been instructed not to move. Deputy Stanaj found an end tie, used to package drugs, in the car at defendant's feet. In addition, when speaking with Deputy Stanaj, defendant expressed an interest in pursuing a role as a confidential informant. Defendant then spoke with Detective Michael Reeves approximately six times on the phone and once in person regarding a confidential informant position. Defendant never expressed his innocence of the underlying crime, or an inability to act as a confidential informant, during these conversations. Defendant's written statement, taken after his arrest for possession of heroin, made no mention of his innocence of the crime. See *People v Williams*, 268 Mich App 416, 420-421; 707 NW2d 624 (2005).

Furthermore, although defendant spoke and met with Detective Reeves regarding the possibility of becoming a confidential informant, in his trial testimony, defendant first denied having ever met Detective Reeves, and then stated that he had talked with the detective, but had not discussed the details of the confidential informant position. In addition, until his trial, defendant had never mentioned that he was on his way to pick up his son when he was arrested. Thus, although defendant denied possessing the heroin, the trier of fact determines credibility. *Passage*, 277 Mich App at 177. In this case, defendant's presence where the substance was found is only one important piece of evidence amongst many others. Viewed in the light most

favorable to the prosecutor, a reasonable trier of fact could find that this evidence shows defendant had control over the substance and knowledge of its presence.

Affirmed.

/s/ Peter D. O'Connell
/s/ Deborah A. Servitto
/s/ Douglas B. Shapiro